IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9660 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHANLAL KISHANCHAND SINDHI KRIPLANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9660 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MR DP JOSHI, ASSTT.GOVERNMENT PLEADER for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of

an order dated 21.7.2001 passed by the learned District Magistrate, Banaskantha at Palanpur in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered four offences registered against the detenu under the Bombay Prohibition Act and statements of two anonymous witnesses recorded by the sponsoring authority on 3.7.2001. The detaining authority observed that the detenu's activities are that of a boot-legger and are detrimental to public health and public order. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. Learned Advocate Mrs. Patel for the petitioner has restricted her arguments to the factum of delay in passing the order indicative of lack of genuineness in the satisfaction recorded by the authority for the immediate need for detention and exercise of powers under Section 3 of PASA Act.

4. The petition is opposed to by learned AGP Mr. D.P. Joshi.

5. It is clear from the documents supplied with the grounds of detention that the statements of anonymous witnesses were recorded on 3.7.2001, the statements were verified by Dy.SP, Palanpur on 5.7.2001. The order was passed on 21.7.2001. Thus, the order suffers from the vice of delay apparently. If the satisfaction of the detaining authority for the immediate need for detaining the petitioner and for the need for exercise of powers under Section 3 of the PASA Act was genuine, the order would have been passed immediately after verifying, but instead the order is passed after 15 - 16 days. The verification also suffers from another fact, namely - it was done by Dy.SP, Palanpur. Verification is not done by the detaining authority. There is nothing to indicate as to how the authority recorded his satisfaction for the exercise of powers under Section 9(2) of the Act. Thus, the satisfaction for the need for exercise of powers under Section 3 as well as the satisfaction for need for

exercise of powers under Sec. 9(2) of the PASA Act both get vitiated. Consequently, the detention order and detention itself would be vitiated. The petition therefore deserves to be allowed on this ground.

6. The petition is therefore, allowed. Order of detention dated 21st July, 2001 passed by the learned District Magistrate, Banaskantha at Palanpur is quashed and set aside. Detenu Mohanlal Kishanchand Sindhi Kriplani be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas